

# **EXHIBIT B**

1  
2 SUPREME COURT OF THE STATE OF NEW YORK  
3 COUNTY OF NEW YORK  
4

5 -----x  
6 SM KIDS, LLC, a Delaware limited liability  
7 company, as successor-in-interest to STELOR  
PRODUCTIONS, LLC,  
Plaintiff,

8  
9 -against-  
10 GOOGLE LLC, a Delaware limited liability  
company; ALPHABET INC., a Delaware  
11 corporation; XXVI HOLDINGS INC., a  
Delaware corporation; and JOHN AND/OR  
12 JANE DOES 1-100, Inclusive,  
13 Defendants.  
14

15 VIDEOTAPED DEPOSITION OF STEPHEN J. GARCHIK  
16 New York, New York  
17 Thursday, August 2, 2018  
18  
19

20 Reported by:  
21 Amy A. Rivera, CSR, RPR, CLR  
22 JOB NO. 145577  
23  
24  
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August 2, 2018  
10:09 a.m.

Videotaped deposition of STEPHEN J. GARCHIK held at the office of COOLEY LLP, The Grace Building, 1114 Avenue of the Americas, New York, New York, pursuant to Notice, before Amy A. Rivera, Certified Shorthand Reporter, Registered Professional Reporter, Certified LiveNote Reporter, and a Notary Public of the States of New York, New Jersey and Delaware.

**A P P E A R A N C E S:**  
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**A L S O P R E S E N T:**  
Matthew Smith, Legal Video Specialist

STEPHEN J. GARCHIK  
VIDEOGRAPHER: This begins media labeled No. 1 of the video-recorded deposition of Stephen Garchik, in the matter of SM Kids, LLC v. Google, LLC, et al., for the Supreme Court of the State of New York, County of New York.

This deposition is being held at 1114 Avenue of the Americas in New York, New York, on August the 2nd, 2018, at approximately 10:09 a.m.

My name is Matthew Smith for TSG Reporting, Incorporated. I'm the legal video specialist.

The court reporter is Amy Rivera in association with TSG Reporting.

Will counsel please introduce yourself for the record.

MR. SHAPIRO: Ian Shapiro, Kevin Mead, and Brendan Hughes for the defendants.

MR. MAGLIERY: And it's John Magliery and Danielle Toaltoan for the plaintiff.

VIDEOGRAPHER: Thank you.

Will the court reporter -- court reporter please swear in the witness.

STEPHEN J. GARCHIK  
STEPHEN J. GARCHIK, having been duly sworn, testified as follows:  
MR. MAGLIERY: Madam Reporter, have you entered any of the pro forma stipulations into the record?  
COURT REPORTER: Not yet.  
MR. MAGLIERY: Thank you.  
MR. SHAPIRO: Which pro forma stipulations did you have in mind?  
MR. MAGLIERY: If there's none, then I don't -- I just want to know if they've been entered.  
MR. SHAPIRO: Oh, I see. Yeah.

**EXAMINATION**

BY MR. SHAPIRO:

Q. Mr. Garchik, you understand that you're under oath this morning?

A. Yes.

Q. Have you had your deposition taken before?

A. Yes.

Q. Okay. And you understand that although you can take breaks throughout the day, you can't take a break while a question is pending

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for the GOOGLES business?

A. I got what I would call a sources and uses statement than a general ledger, but it's like a general ledger.

Q. What information did the sources and uses statement contain?

A. It showed how much money was spent in the period it was reporting, and then who will -- what bills were paid and to who --

Q. Okay?

A. -- the amount.

Q. That sounds like uses.

What about sources?

A. The sources were the money that I was contributing.

Q. Okay. And you were contributing the money personally or SJM was contributing the money?

A. In -- in the period of time when SJM was the owner, SJM was contributing the money.

Q. Okay. And did SJM Partners prepare a profit and loss statement for the GOOGLES business?

MR. MAGLIERY: Objection.

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A. It just prepared the sources and uses.

Q. Okay. Did -- did SJM Partners prepare a balance sheet for the GOOGLES business?

MR. MAGLIERY: Objection.

A. It just prepared the sources and uses.

Q. Okay. And would the sources and uses document be prepared annually, or less regularly than that?

A. It -- it -- well, it was prepared annually, yes.

Q. Okay. And you said it was prepared by the SJM Partners' accounting staff. Is that right?

A. Yes, sir.

Q. And was any office space of SJM Partners allocated to the GOOGLES business?

MR. MAGLIERY: Objection.

A. Well, the people that worked on SJM business that were also asked to work on the GOOGLES business --

Q. Right, fair enough.

A. -- obviously were.

Q. And that would be Tammy and the accounting people?

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A. Tammy and the accounting people.

Q. Were there any -- did you store records of the GOOGLES business at SJM Partners?

A. We did.

Q. And where were they stored, in -- in Reston, Virginia or in Florida?

MR. MAGLIERY: Object to form.

A. Well, depends when you're asking.

Q. In or around 2013, when the assets were transferred.

A. They -- they were stored in three places. Obviously -- maybe four -- computers, people's computers, in the Reston office, in Iron Mountain Storage, you know, offsite, and then the records I had were stored in Florida.

Q. In your office in Florida --

A. In my office in Florida.

Q. -- or in your home? Okay.

A. Yeah, in my office.

Q. And -- and -- and we'll come to this later, but just so that the record is clear, your recollection is that SJM Partners became the -- became the owner of the GOOGLES business in or around early 2013, is that about right?

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MR. MAGLIERY: Objection.

A. I'm not sure.

Q. Okay. What's your best recollection?

A. Well, my best recollection would be whatever the assignment agreement said --

Q. Okay.

A. -- that it occurred.

Q. I can represent to you, and then I'll show it to you later in the day, that it was January 1st, 2013.

A. Okay.

Q. And in -- and when did SJM Partners stop being an owner of the GOOGLES business?

A. When did it stop?

Q. Yeah.

A. When we transferred it to SM Kids.

Q. Okay. So earlier this year?

A. Earlier this year.

Q. Earlier this year, right.

And was SJM Partners the sole owner of the GOOGLES business during that roughly four-year period?

A. Yes.

Q. Okay. So '13, '14, '15, '16, '17,

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 roughly a five-year period?  
 A. Yes, five years.  
 Q. Okay. And during that five-year period when SJ Partners was the sole owner of the GOOGLES business, did -- did the business contribute any income to SJM Partners' bottom line?

MR. MAGLIERY: Objection.  
 A. Net income? To the bottom line?  
 Q. Let's start there, net income.  
 A. No.  
 Q. Okay. What about revenue -- gross revenue?  
 A. We had some revenue during that period of time.  
 Q. How much?  
 A. I don't recall.  
 Q. Roughly?  
 A. I'm sorry. I don't recall.  
 Q. More than \$1,000?  
 A. I'm not sure.  
 Q. More than \$100?  
 A. Definitely more than \$100.  
 Q. More than \$500?

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A. I believe more than \$500.

MR. MAGLIERY: I'll admonish the witness that you are under oath and you should not speculate about your answers. If you don't know, you don't know.

THE WITNESS: Okay.

Q. Do you want to change your answer or you're confident that it was more than \$500?

A. I -- it's just easier to say I don't -- I don't know.

Q. Okay. But are you -- and -- and just in light of John's admonition, are you confident that it's more than \$100?

A. Yes.

Q. Okay. And what was the source of that revenue?

A. We sold t-shirts, hats, I guess --

Q. Go ahead. Sorry. T-shirts, hats?

A. We sold copies of the book, "The Googles From Goo."

Those are the ones I recall.

Q. Okay. And how many copies of the book were sold?

A. I don't recall.

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 Q. Was it more than five?  
 A. I don't recall.  
 Q. Was it more than one?  
 A. I don't recall.  
 Q. Do you recall anyone who bought the book?  
 A. I didn't sell the books. The books were sold by Matt Mazer.  
 Q. Who provided him with the books to sell?  
 A. We gave him the book to sell.  
 Q. How many books did you give him -- how many copies of the book did you give him to sell?  
 MR. MAGLIERY: Objection.  
 A. I don't recall.  
 Q. Was it more than one?  
 A. We gave him one book that he could make copies of to sell, as I recall. So he could make as many as he needed.  
 Q. I see.  
 But you don't know whether he sold one book or more than one book?  
 A. I don't recall.  
 Q. And you don't know anyone he sold the

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book to?

A. I do not.

Q. Do you know how he sold them? Did he put them on Amazon or did he sell them through a network of people that he knew?

Or do you -- do you know how he sold the book, through what distribution method?

MR. MAGLIERY: Objection.

A. I don't know through what distribution method he sold them.

Q. Do you know how much he charged for the book?

A. I don't remember.

Q. Do you know whether he was entitled to a commission on the book or a markup?

MR. MAGLIERY: Objection.

A. The arrangement we had with him is he wasn't.

Q. Okay.

Okay. So that's -- that's the book.

Would SJM Partners' records reflect how many books were sold?

A. It would reflect any receipts that came in, but I don't know, unless it knew what it

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was sold for, if it would know how many books were sold.

Q. But would there be receipts associated with the book sales or they would just be receipts?

A. Receipts.

Q. So they wouldn't designate the receipts as resulting from the book sales?

A. I'm not sure.

Q. Okay. And the -- the T-shirts, you talked about T-shirts, those are the T-shirts sold on the Peace Love Solve website?

A. Yes, sir.

Q. And -- and Peace Love Solve is your wife's apparel company, correct?

A. Yes.

Q. And that's a private for-profit company that gives some of the proceeds to Autism Speaks and other philanthropies. Is that right?

MR. MAGLIERY: Objection.

A. It's a private company, and a percentage of everything she sells goes to charity.

Q. Right, not just the T-shirt -- the

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GOOGLES T-shirts?

A. Any -- any product she has --

Q. Okay.

A. -- goes to charity.

Q. Okay. And does all of the profit go to charity or a portion of the profits go to charity?

MR. MAGLIERY: Objection.

A. Well, a percentage of the sales price goes to charity.

Q. Okay.

A. That's how it's set up.

Q. Okay. And the -- the -- and when did -- when did Peace Love Solve start selling GOOGLES T-shirts?

A. I think it was 2017.

Q. Okay. And that was after Bungalow created the -- the new logo?

MR. MAGLIERY: Objection.

Q. Let me ask you an easier question: Who designed the T-shirts?

A. My wife ultimately designed the t-shirts.

Q. Who designed the graphic that's

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imprinted on the T-shirt.

A. On some of them, she used the logo that Bungalow did, and on others, she didn't.

Q. She designed it herself?

A. She designed it herself.

Q. And -- and the revenue from the sale of the T-shirts on the Peace Love Solve website, do those revenues belong to Peace Love Solve?

MR. MAGLIERY: Objection.

A. The revenues -- repeat the question? I'm sorry.

Q. The revenues collected from the sale of the GOOGLES T-shirts on the Peace Love Solve website, are those revenues of Peace Love Solve?

MR. MAGLIERY: Objection.

A. Peace Love Solve for tax purposes books revenue for any shirt that it sells.

Q. And pays taxes on that revenue? Pays sales tax?

A. It pays sales tax.

Q. And then that revenue is deposited in Peace Love Solve's bank account?

A. That's correct.

Q. Okay. And the hats that you were

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referring to, are those hats also sold on the Peace Love Solve website?

A. Yes, sir.

Q. Okay. And do those have a -- a GOOGLES logo on them?

A. Some do.

Q. Okay. And the ones that do, is that logo the logo that was designed by Bungalow or was that designed by your wife?

A. If the hat has the logo that was designed by Bungalow, then it's a -- it was a Bungalow-designed hat.

Q. Okay.

A. If it has -- one that's designed different than the Bungalow logo, then it's a logo designed by my wife.

Q. And -- and I think you said that you started selling the T-shirts in 2017?

Did you say when in 2017?

A. I did not.

Q. Okay. Roughly when in 2017?

A. I don't recall.

Q. Early or late or --

A. I'm sorry. I don't recall.

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Q. That's okay.

And is the same true of the hats, sometime in 2017?

A. Yes, sir.

Q. And in both cases, is it when the items began appearing on the Peace Love Solve website?

MR. MAGLIERY: Objection.

A. Well, to the extent they were sold off the website, then they were sold once they appeared on the website. But they could have been sold prior to that --

Q. Okay.

A. -- before putting them up other website.

Q. Okay. Let me -- with -- with respect to the money that Peace Love Solve collects from the sale of the T-shirt and the hats and pays sales tax on, has any of that money been remitted to the GOOGLES business?

A. I don't know.

Q. Well, has Peace Love Solve written any checks to the GOOGLES business?

MR. MAGLIERY: Objection.

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A. I don't know.

Q. What percentage of the sale proceeds that Peace Love Solve collects on the sale of the t-shirts and the hats is the GOOGLES business entitled to?

MR. MAGLIERY: Objection.

A. Well, it's entitled to -- if the shirt sales price, after giving away the portion to charity, exceeded the cost so that there was any money left over, then I don't recall what the deal is between Peace Love Solve and SM Kids.

Q. Is there an agreement that defines the economic relationship between SM Kids and Peace Love Solve?

A. You mean written agreement?

Q. Yes.

A. No.

Q. Was there a written agreement between SJM and Peace Love Solve that defined the economic relationship in connection with the sale of the t-shirts or the hat?

A. No.

Q. Is there an oral agreement governing the sale of the T-shirts and hats between Peace

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Love Solve and either SJM Partners or SM Kids?

A. There's -- there's an understanding.

Q. And what is the understanding?

A. That SM Kids would get whatever the net was left after the sale of the shirt.

Q. Okay. After the allocation to charity --

A. Charity.

Q. -- and over the cost?

A. If anything.

Q. If anything.

And do you know whether there is a margin on those sales?

A. I don't --

Q. After the cost --

A. I don't know if there is a margin on those sales.

Q. And you don't know whether any money's ever been remitted either to SJM or to SM Kids for the sale of those T-shirts and hats?

A. I don't recall.

Q. Okay. And -- and -- and with respect to the books, you don't know how much Matt Mazer every admitted either -- well, how much Matt Mazer

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remitted to SJM for the sale of the books, do you?

A. I do not.

Q. Okay. And we went down this road when we were talking about how much gross revenue SJM Partners had earned from the GOOGLES business, and I think you weren't sure whether it was more or less than \$500, but you thought it was more than \$100, correct?

MR. MAGLIERY: Objection.

A. I -- I said it was more than \$100.

Q. Right. And when I asked you about 500, you weren't sure, correct?

A. I didn't recall.

Q. Okay. So with respect to the revenue that SJM Partners earned from the GOOGLES business, it -- am I correct that it would have only come from the book because you don't recall any monies being remitted for the t-shirts or the hats?

MR. MAGLIERY: Objection.

He said he didn't recall it. He didn't say it didn't happen.

Q. Well, let me: What -- what did you -- when we talked about the source of that revenue,



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we talked about the T-shirts, hats, and copies of the book.

Now that we've walked through each of those categories, is it your belief that any money that came into SJM Partners would have come from Matt Mazer's sale of the book?

MR. MAGLIERY: Objection.

A. Well, it's my -- it's my belief that the money from the sale of the book that came -- came to SJM Partners came to SJM Partners.

Q. Right.

A. And I said I didn't recall if any money from the other sources came in or not.

Q. Okay. And you worked with Matt Mazer for about a year, correct?

A. Yes.

Q. At a certain point, you parted ways with Matt Mazer in early 2014, correct?

A. I don't remember if it was early 2014 or end of '13, but we did part ways.

Q. And -- and -- and your working relationship with him lasted about a year. Is that correct?

MR. MAGLIERY: Objection.

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A. Well, we had a signed contract. So however long the contract lasted is how long the working relationship lasted.

Q. Okay. Okay. And we'll look at that.

And what -- what I really just wanted to establish is that to the extent that he sold books and collected revenue from the sale of those books, that would have been during the period he was under contract?

MR. MAGLIERY: Objection.

A. Well, he was -- one of his responsibilities during the period of the contract was to sell the book.

Q. Okay. And your recollection is to the extent that there were any revenues from the sale of the book, it would have been during that period?

A. At least during that period.

Q. Well, when else would it have been?

A. Well, we -- we had a relationship that started -- I met him before we signed the contract.

Q. And you arranged for him to sell the book before you signed the contract?

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A. I -- he made recommendations prior to us signing the contract that included those kinds of tasks. So if he had chosen to start before, then -- and any revenue that was generated before, we would have gotten it before.

Q. Do you have any records of how many books he sold?

MR. MAGLIERY: Objection.

A. I don't know.

Q. And with respect to SJM Partners, we've talked about the gross revenue from the GOOGLES business.

During the five-year period when SJM Partners owned the GOOGLES business, what -- what was the sum of its expenditures for the business?

MR. MAGLIERY: Objection.

A. I don't remember offhand, though I think we were asked to produce some documents that provided that information.

Q. Okay. So we'll look at that later -- the -- the Stephen Garchik 2012 expenses, 2013 expenses?

A. It was broken out by year, I believe.

Q. Okay. We'll look at that.

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But just do you have a recollection of the sort of magnitude of the expenses in the aggregate for that five-year period and how much you spent on the business or how much SJM Partners spent on the business?

MR. MAGLIERY: Objection.

A. I'm not sure what a "magnitude" is, but...

Q. Like did you spend a hundred thousand dollars, a million dollars, two or three hundred thousand?

A. I don't remember. But we have the papers here. We can check.

Q. Do you have any understanding as you sit here today how much SJM Partners spent on the business during that five-year period?

A. Well, I -- I know what we spent -- roughly what we spent for Matt. That was during that period.

Q. That was about 70,000?

A. 70,000 plus or minus.

Q. Okay.

A. I know we -- we put out some advertisements to find joint venture partners.



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And that was \$30,000.

I know we began the relationship with Bungalow. That was to be roughly another 100-plus thousand dollars. I know there were legal -- some legal fees in there and other miscellaneous expenses. So I don't know what that all adds up to, but at a minimum, it that was amount of money.

Q. Those would be the -- made the material categories?

MR. MAGLIERY: Objection.

A. The ones I remember.

Q. Okay. And the legal expenses would be in those financial documents that you produced? Those expenditure reports?

MR. MAGLIERY: Objection.

You don't have to testify about the document if you don't remember it.

Q. You remember that you produced documents to your lawyers that reflect how much you spent other business in a given year?

A. Yes.

Q. And the legal expenses would be included in there?

A. Any expense --

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Q. Okay.

A. -- related to that would be included.

Q. Got it, that's helpful.

And just briefly with respect to SM Kids, how much revenue has SM Kids earned from the GOOGLES business since its formation earlier this year?

MR. MAGLIERY: Objection.

A. I don't -- I don't recall.

MR. MAGLIERY: Objection.

Q. More than a hundred dollars?

A. I honestly don't recall.

Q. More than \$10?

A. I don't recall.

Q. And what has SM Kids' expenditures been since its formation earlier this year?

MR. MAGLIERY: Objection.

A. You're asking me by category? By dollar amount?

Q. No, dollar amount. Dollar amount.

A. Well, I don't remember the amounts.

Q. Just roughly how much has SM Kids spent on the business since February of this year when it was formed?

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A. Was that one of the documents we provided?

Q. I'm not remembering anything.

A. Then I'd have to check.

Q. Do you know whether SM Kids has had even a dollar of revenue this year?

A. I know we've sold hats and shirts this year.

Q. On the Peace Love Solve website?

A. On the Peace Love Solve website.

Q. But you don't know whether any money has been remitted by the Peace Love Solve website?

A. I don't know if it has and I don't know, you know, what schedule it follows to do that.

Q. And you don't know whether there's any profit on the sales on the Peace Love Solve website?

A. I don't know if the cost of the shirt was less or more than the sales price of the shirt.

Q. Right, right.

So -- so you don't know whether there was any profit to be remitted pursuant to that

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understanding between SM Kids and Peace Love Solve, correct?

MR. MAGLIERY: Objection.

A. I -- I don't know if there was any or not any.

Q. And when you refer to that understanding between either SJM or SM Kids and Peace Love Solve, you're really referring to an understanding between you and your wife, correct?

MR. MAGLIERY: Objection.

A. My wife controls Peace Love Solve, so she and I would talk about it. She and I would be the ones to talk about it.

Q. And this understanding that you're describing, is that an understanding that arises from an explicit conversation or it's just an understanding that you think exists, but there may or may not have been a conversation about it?

MR. MAGLIERY: Objection.

Q. Let me put it this way: Was there a conversation about that understanding?

A. There was a conversation about the understanding.

Q. And when was that conversation?

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the time of the Stelor bankruptcy?

A. I really don't.

Q. Okay. Let me ask you about a specific piece of information in here.

Let me ask you to turn to page -- you know what? I'm going to come over and help you find it because I think it will be easier.

A. Thank you.

Q. I'm going to ask you about this page here. It says, document 1710, page 1 of 9, statement of financial affairs.

MR. MAGLIERY: 1710.

MR. SHAPIRO: It's right here.

MR. MAGLIERY: Page 2 of 9.

MR. SHAPIRO: It's this right here.

MR. MAGLIERY: Okay.

And, Ian, it looks like this is a few filed documents that are put together. Is that right?

MR. SHAPIRO: I didn't think so but -- because they all say document 17 --

MR. MAGLIERY: Okay.

MR. SHAPIRO: -- slash 10 at the top. Maybe I don't -- yeah. So it's -- it's all

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document 17 and then it has --

MR. MAGLIERY: Okay.

MR. SHAPIRO: -- subparts, apparently.

BY MR. SHAPIRO:

Q. So, Mr. Garchik, I wanted to ask you specifically about Section 1 on this page, which refers to income from employment or operations of business.

And -- and I'm not asking you to interpret this document. I'm going to ask you what you recall and whether or not you recall anything different from what's reflected in this document.

It says that in 2009, Stelor Productions had \$625 in revenue as of the date of this filing.

Do you see that?

A. Subscription revenue.

Q. Right.

A. I see that.

Q. Do you have any reason to believe that Stelor had anything more than \$625 in revenue in that year?

A. I don't know.

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Q. And aside from what's written here, do you independently know what was the source of Stelor Productions' revenue in 2009?

A. I would not.

Q. Okay. And then we come to 2008, where their -- where Stelor Productions has \$634 in revenue.

Do you see that?

A. Yes, sir.

Q. And that overlaps with the period of time when you were briefly acting CFO, correct?

A. I don't believe so.

Q. You don't believe that your --

A. I don't see I was an acting CFO at any time in '18.

Q. In -- in '08?

A. '08, excuse me.

Q. Okay. So that the -- the period that you were acting CFO would have been entirely in 2007?

A. That's my recollection.

Q. Okay. But -- but you were a director for part of 2008, correct?

A. I was.

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Q. And do you have any understanding as to the source of that is \$634 in revenue?

A. Other than what it says.

Q. Other than what it says, do you independently have any understanding of how Stelor Productions earned \$634 in income in 2008?

A. No.

Q. Do you have any understanding as to which products or services or anything else it related to?

A. No, I do not.

Q. Okay. And then we come to 2007 which that overlaps, in part, with the period in which you were acting CFO.

Do you have any understanding as to the source of that \$643 in income?

MR. MAGLIERY: Objection.

A. No, I don't.

Q. And do you have any basis for contending that any of the amounts reflected on this page for 2007, 2008 and 2009 are inaccurate?

A. I have a question. But I don't know who I'd get to ask it of.

Q. Well, is it a question -- is it a

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A. -- to pursue the plan.

Q. And when you refer to recouping the original loan proceeds for the StelPro Investors, what -- what amount were you hoping to recoup at that point in time?

MR. MAGLIERY: Objection.

Q. What was the hole that you were trying to make up?

A. It says "original loan proceeds."

Q. Right.

A. So however that amount was.

Q. Do you know what it was?

A. I think you asked me earlier if it was around \$3 million and I said I didn't remember -- remember.

Q. Okay.

A. It's definitely on some piece of paper here.

MR. SHAPIRO: Okay. Let's take a look at Tab 22.

We're going to mark as DX-4, a document Bates stamped SMKIDS000220 through 232.

(Defendants' Exhibit 4, trademark

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assignment, bearing Bates Nos. SMKIDS000220 through SMKIDS000232, was marked for identification at this time.)

Q. What -- what is Defendants' Exhibit 4, Mr. Garchik?

A. One moment. Let me look at it.

Q. Sure.

A. It's a trademark assignment from Stelor Productions as assignor to me as trustee for all the trademarks listed on Schedule 1.

Q. And then do you see at the page Bates stamped 228 there's a second trademark assignment with a separate schedule of trademarks?

A. I didn't look at that one. I apologize.

Q. Okay.

A. You're correct. There's a second one from Stelor assignor to me as trustee assignee for a separate Schedule 1. So there are two.

Q. Right. So let -- let me ask: Do you know why this was done in two separate assignments, what the difference is between the marks in the -- in the first assignment and the marks in the second assignment? Why it was done

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that way?

A. No, I don't know why.

Q. Okay. And were -- were you taking these assignments of the trademarks as -- in your own name or as a trustee for the StelPro Investors?

A. As trustee for the StelPro Investors and myself, because I had made that one loan in my name as trustee.

Q. Where -- where does it -- it says, "Stephen J. Garchik, Trustee." It says that this is assignment to you as trustee. It doesn't say that it's an assignment to you personally.

So I'm trying to understand what the basis is for your testimony that this is an assignment to you personally.

MR. MAGLIERY: Objection.

If you know.

A. I don't think I said it was to me personally, did I?

I don't remember saying that.

Q. I misunderstood you then.

So you understood that you were taking these trademarks as a trustee for the StelPro

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Investors?

MR. MAGLIERY: Objection. He said StelPro and himself.

A. As trustee.

Q. So you were a trustee for yourself --

A. The title to the note said what -- the lender was Stephen J. Garchik, Trustee, even though I had lent the money.

Q. I see.

A. So on behalf of Stephen J. Garchik, Trustee, and as trustee for the two StelPro entities, I was taking title --

Q. So --

A. -- as assignee.

Q. So even in the case where you made the loan individually, you were the trustee on that note?

A. Yes.

Q. I got it.

And -- okay. And did you then make arrangements to have the trademarks assigned to StelPro Investors?

MR. MAGLIERY: Objection.

Q. Or was it your understanding that as a

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a different way.

I'm counting on Google honoring the 2008 agreement and staying out of the children's space as the reason to making sure that my business is going to be successful. That's what I'm counting on.

Q. I -- I have one last question on this topic: When you talk to investors or potential partners about the potential of the googles.com website, do you discuss the proximity between the GOOGLES name and the Google brand?

A. Well, Bobby Friedman was tasked with the responsibility to talk to those major corporations.

Q. And you know that he emphasizes that point when he talks to investors and corporations, right?

A. I don't know what he says to them.

Q. You have no idea?

A. I'm not there.

MR. SHAPIRO: We can take a short break and then we'll continue.

VIDEOGRAPHER: The time is 4:00 p.m. We're off the record.

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(Recess.)

VIDEOGRAPHER: The time is 4:15 p.m. We're on the record.

MR. SHAPIRO: We'll mark as DX-24 a document stamped SMKIDS -- 21, that's right -- DX-21, a document marked SMKIDS3092 through 3094.

(Defendants' Exhibit 21, agreement, bearing Bates Nos. SMKIDS3092 through SMKIDS2094, was marked for identification at this time.)

BY MR. SHAPIRO:

Q. But before I ask you about this document, Mr. Garchik, as of late 2013, early 2014, when you were parting ways with Mr. Mazer, who owned the googles.com business assets?

A. SJM Partners.

Q. Okay. And that includes the trademark?

A. Yes.

Q. Now, if we -- if we turn our attention to DX-24 -- 21, can you tell me what DX-21 is?

A. It's an agreement between Taral Productions and StelPro Investors, LLC to

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recognize Allan Cohen's efforts, previous and going forward, and capital contributions, previous and going forward, in helping build the business and explains how, if receipts are received, how they'd be shared and that we would have joint decision-making with respect to major decisions that we made going forward.

Q. Now, do you have any explanation as to why the assignment is from StelPro Investors, LLC rather than SJM Partners?

MR. MAGLIERY: Objection.

A. Well, my -- my explanation is that I didn't do a good job of reading the document when it was prepared and should have caught that.

Q. And who is your lawyer when this document was prepared?

A. I didn't have a lawyer.

Q. Did Allan Cohen have a lawyer?

A. Allan Cohen had a lawyer.

Q. And who was Allan Cohen's lawyer?

A. This Mr. Wyman.

Q. Of a Davis, Wright & Tremaine?

A. Well, back then, it was Wyman & Isaacs.

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Q. I see.  
And in this agreement, you're assigning 50 percent of the GOOGLES IP to Taral, right?

A. I agree to assign, grant, and set over to Taral an undivided one-half interest in the property. That's what it says.

Q. And Taral is Allan Cohen's company?

A. Taral is Allan Cohen's company.

Q. Okay. And the 50 percent assignment includes the domain name and the trademarks, correct?

A. It would.

Q. Okay. And it did, right?

A. Well, this agreement expired by its terms.

Q. It expired after 18 months?

A. Yes --

Q. Okay.

A. -- so it never happened, but it would have.

Q. Well, for the 18 months before it terminated, wasn't it in effect?

Wasn't -- wasn't this agreement

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effective for the 18 months until it terminated?

MR. MAGLIERY: Objection.

A. The agreement was effective, I believe you're right, that the agreement would be effective until it terminated.

Q. Right. So let me direct your attention to Section 7, and clarify that it terminates after two years, correct?

A. Yes.

Q. Okay. So for two years, from February 6, 2014 to February 6, 2016, Allan Cohen through Taral Productions owned half of the Google IP, correct?

MR. MAGLIERY: Objection.

A. Okay. The way paragraph 1 reads, "StelPro hereby agrees to assign and grant over to Taral an undivided one-half interest in the property, including the rights and benefits of StelPro under the settlement agreement." Okay?

Saying I agree to do it. I never formally executed any papers that effectuated that.

Q. Doesn't it say you hereby agree to assign?

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A. Well, it says, I agree to.

Q. I see.

So your testimony is that --

A. If it said, "As hereby assigns," then it would be different. But it says, "Hereby agrees to assign."

Q. I see.

And so your belief is that Allan Cohen through Taral never became a 50 percent owner of the GOOGLES business?

A. That is my belief.

Q. And is that what Allan Cohen believes?

MR. MAGLIERY: Objection.

A. Well, I don't -- I don't know what he believe.

Q. You've never discussed with him whether or not he was a part owner of the business for a period of time?

A. We -- all our discussions have been irrespective of these documents. It's just been working together to make something happen.

Q. Did he ever convey to you during this two-year period that he understood himself to be a part owner of the GOOGLES mark?

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A. I don't recall.

Q. And so explain to me again, is it your view that notwithstanding your execution of this agreement, that the -- the assignment of the 50 percent of the GOOGLES IP pursuant to this agreement would not be effective unless and until you entered into separate agreements assigning that IP?

MR. MAGLIERY: Objection.

A. As a businessperson reading this document, I don't believe it would be effective unless I formally assigned it to him.

Q. And what would that formal assignment consist of?

A. It would be similar to the assignments that we've looked at earlier today from me to whomever, StelPro to whoever kind of thing.

Q. And what's the difference between those formal assignment agreements that we've looked at throughout the day and this assignment agreement?

MR. MAGLIERY: Objection.

A. To me, the word "hereby agrees to," that's the difference.

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Q. And did you discuss --

A. And --

Q. -- that with Allan Cohen at the time you entered into this agreement?

A. His lawyer drafted this and I signed it.

Q. And is it your testimony that at the time you signed this agreement you believed you were still the 100 percent owner the GOOGLES IP?

A. Yes, it is my testimony.

Q. Okay. And -- and you believed in February of 2014 that before and after signing this document, you remained the 100 percent owner of the GOOGLES IP, including the trademark?

A. Yes.

Q. And you've never discussed that one way or another with Allan Cohen?

A. To my knowledge, it's never come up.

Q. So what was -- what was in it for Allan Cohen in this agreement? What was Allan Cohen getting if he wasn't getting 50 percent of the GOOGLES IP?

A. Allan was getting the same thing that he ultimately got in the successive agreements,



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which Bungalow got in successive agreements, which is in return for efforts and capital the right to enjoy the benefits that come from the business if and when it was commercially successful.

Q. And --

A. A profits interest.

Q. -- what had Allan Cohen contributed economically as of the date of this agreement?

MR. MAGLIERY: Objection.

A. "Economically" to you means money?

Q. Money. How much did he spend on the business as of the date of this agreement?

A. I don't know.

Q. And how much did he spend after the date of this agreement?

A. Going how far out?

Q. In the two --

A. To today?

Q. No, in the two years that this agreement was in effect, how much did Allan Cohen spend on the business?

A. All I know is he spent more from the date of the agreement to the end of it, but I don't know how much total he spent.

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Q. Well, earlier, you were talking about the fact that he had made contributions before and after this agreement, and so I'm just trying to get a sense of how much money he had spent or put into the business.

A. I appreciate that, but I don't remember how much.

Q. And paragraph 4 has an allocation of proceeds which at a certain point entitles you to \$3-and-a-half million after each party had recouped its expenses, correct?

A. Yes, sir.

Q. And am I correct that the \$3-and-a-half million roughly corresponds to the -- the StelPro loans and the amounts that you had spent in the bankruptcy and thereafter since 2011, is that how you came up with the 3-and-a-half million?

A. That was my --

MR. MAGLIERY: Objection.

Go ahead.

A. I'm sorry. Repeat the question.

Q. Am I correct that the 3-and-a-half million represents the amount of the unrecovered

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loan and the amount that you had spent on the foreclosure and bankruptcy litigation, and then the amounts that you had spent on the GOOGLES business since 2011, isn't that how you came up with the 3-and-a-half million?

A. It -- it was an approximation of the original principal of the loans and the funds I had spent subsequent to that date.

Q. And the funds that you had spent subsequent on that date would be the funds you spent on the litigation and the funds that you had spent on the business since 2011, correct?

MR. MAGLIERY: Objection.

A. Well, it was the fund -- funds I spent on litigation, Matt Mazer, those funds, the ones we've talked about previously, any other obligations I had by virtue of the business, any taxes that were due by virtue of the business. So anything that I wrote a check for related to the business --

Q. Okay.

A. -- approximately.

Q. Okay. And then you subsequently assigned 10 percent of the GOOGLES IP to someone

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named Jared Lader, correct?

A. Lader

MR. MAGLIERY: Objection.

Q. Lader.

A. Excuse me. I didn't.

Q. Who did that?

A. I assigned 5 percent --

Q. Right. And Allan --

A. -- to the business.

Q. -- and Allan Cohen assigned --

A. Allan Cohen assigned 5 percent.

Q. How did Allan Cohen assign 5 percent if he actually didn't receive 50 percent?

A. Well, I don't know. I don't have the document in front of me. Did he assign it in the business or of the profits interest?

MR. SHAPIRO: Well, why don't we mark Tab 58 as DX-22.

(Defendants' Exhibit 22, document, was marked for identification at this time.)

BY MR. SHAPIRO:

Q. I see. So -- so your testimony is that Jared Lader was accorded a share of the proceeds, but not an interest in the IP. Is that

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right?

MR. MAGLIERY: Objection to form.

A. Well, I don't have to testify. The agreement says specifically that paragraph 4C is hereby deleted and replaced with the following: 45 percent to Taral, 45 percent to StelPro, and 10 percent to Jared. And 4C deals with only proceeds derived from the property --

Q. Okay.

A. -- out of the sale.

Q. Got it.

And who's Jared Lader?

A. Jared Lader is Allan Cohen's right-hand man.

Q. Okay. Is he related to him?

A. No.

Q. And why did Allan -- why did Allan Cohen want to give 10 percent of the proceeds to Jared Lader?

A. He -- he asked Jared -- he has asked and continues to ask Jared to do all sorts of work on our collective behalf, research and other things, related to the website, the business, and the interactions with Mazer, Bungalow, and the

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like.

Q. Has Jared Lader produced any creative content for the business?

A. He has -- no, I don't believe he's produced any creative content.

Q. Okay.

Just -- just so I have some sense of it, what -- what in your mind is the most important thing Jared Lader has done for the business?

A. He's -- the most important thing he's done?

Q. Yeah.

A. He's cataloged everything that we've sent him to put like on disks and things. So like for Bobby Friedman needed information at Bungalow, he put it all together. He put all the documents together. Tammy didn't do it.

Q. Okay.

A. Jared did it.

So he responded to those requests. He helped us put the ads together that we sent out looking for the venture partners when we did that. He -- what else did he do? He --

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Q. When did you go out and look for venture partners?

A. Whenever -- there's an e-mail in there somewhere showing the ad that we put out in the marketplace.

Q. Okay.

A. But it was before Bobby Friedman.

Q. And did you get any interest?

A. We didn't get any serious interest. We got interest.

So -- but I mean, he did recordkeeping, keeping track of stuff, and Allan was fond of him, and Allan came to me with a request and I agreed.

Q. And -- and why did none of the venture investors ultimately invest in the business?

A. The ones that responded?

Q. Yeah.

A. Most of them were not what you would consider to be -- they were mom and pops that responded to the ads. They weren't big entities. They didn't have the means.

So they would like to have done it, but they didn't have the means.

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Q. I see.

Any other reasons?

A. That was the primary one.

Q. Okay.

MR. SHAPIRO: I'm going to mark as DX-22 -- 23, a screenshot of the GOOGLES website as of January 2015.

(Defendants' Exhibit 23, screenshot, was marked for identification at this time.)

BY MR. SHAPIRO:

Q. Mr. Garchik, DX-23 is the website as of January 2015.

Do you see that?

A. Where is that date?

Q. It's on the top there. It's a little bit hard to read.

Do you see it says January 4, 2015?

A. I need better glasses.

Is that what it says?

Q. Yes.

A. Okay.

Q. Yeah. And do you see that -- that -- that -- that at this point in time, you're using the website to solicit investors and content



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and services considered to be -- maybe this is what you were explaining a moment ago, but how was producing products and services related to soliciting a sale, joint venture or other capital infusion?

MR. MAGLIERY: Objection.

A. Anyone soliciting money for a business has a business plan. And the more detailed the plan can be, the easier it is to make a determination as to whether it's something an institution would want to invest in or not.

So we charged Bobby Friedman with the responsibility to put together sufficient material, products and services, sufficient material, to ensure that when he went out, that he would get, you know, serious inquiries and hopefully a successful response.

Q. So you're not talking about a business plan there, although that may have been part of it. You wanted him to create enough content so that you had something to show to potential investors.

A. Both content and related services that the website would be responsibility for, yes.

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Q. What kind of services do you mean?

A. Just his ideas about ad revenue, sources of revenue that would come in, where it would be on the website, how it would be solicited.

Q. I see. And -- and --

A. Anything required -- sorry for interrupting.

Q. That's okay. Go ahead.

A. I mean, he had a pro forma, okay? He had -- so he had to be able to explain this amount of revenue is coming from here, and that's what he was tasked with doing.

Q. Okay. And -- and he was also tasked with creating creative content that would define the new website, correct?

A. Based on his research of the children's space at that time.

Q. Okay. And he charged \$200,000 to do this work?

MR. MAGLIERY: Objection.

A. He budgeted roughly \$200,000 to put the live-action production together. I don't recall exactly how much we ended up spending, but

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that was his budget at the time.

Q. Was it more or less than 200,000?

MR. MAGLIERY: Objection.

A. Well, it was not exactly \$200,000. That much I remember.

Q. Okay. But was it in that neighborhood?

A. It was in the neighborhood, but it was not exactly.

Q. How much of the 200,000 did you pay?

A. Half.

Q. And Allan Cohen paid the other half?

A. Taral paid the --

Q. Taral paid the other half.

A. Yes.

Q. And if you look at Section 4, in this agreement your -- your separate recoupment has been reduced from 3 and a half million dollars to a million dollars, do you see that?

A. Yes, sir, I do.

Q. Why had your entitlement to additional recoupment come down so dramatically?

MR. MAGLIERY: Objection.

A. The terms of this document were

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negotiated between the parties and this is what the conclusion was.

Q. Okay. Understood.

Section 7 of this agreement says that it terminates after 18 months.

Do you see that?

A. Hold on. That's another page.

Q. Okay.

A. Yes, sir.

Q. Has this agreement been terminated or modified?

MR. MAGLIERY: Objection.

A. You're asking two things or one thing?

Q. No, let me start -- let me start -- let me start over.

Eighteen months have passed since the date of this agreement, correct?

A. Yes.

Q. What happened to this agreement at the end of 18 months?

A. It terminated.

Q. Okay. And if you look at the end of paragraph 7 it says that, "After this agreement terminates, Bungalow's interest shall revert to